

U.S. DISTRICT COURT
FILED AT WHEELING, WV

APR 07 2009

NORTHERN DISTRICT OF WV
OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LONNIE ANTHONY SMITH

a/k/a TIMMY,

DONALD GASCHLER,

SHELLY GASCHLER,

Defendants.

Criminal No. 5:09CR7

Violations: 18 U.S.C. §2
18 U.S.C. §922(g)(1)
18 U.S.C. §922(g)(3)
18 U.S.C. §924(a)(2)
18 U.S.C. §924(c)(1)(A)(I)
18 U.S.C. §924(d)
18 U.S.C. §1952(a)(3)
21 U.S.C. §841(b)(1)(A)
21 U.S.C. §843(b)
21 U.S.C. §843(d)(1)
21 U.S.C. §846
21 U.S.C. §853

SUPERCEDING INDICTMENT

The Grand Jury charges:

COUNT ONE

(Conspiracy to Possess with Intent to Distribute in Excess of 1 Kilogram of Heroin)

From in or about January 2002 through on or about February 3, 2009, at or near Weirton, West Virginia, within the Northern Judicial District of West Virginia, and elsewhere, defendants **LONNIE ANTHONY SMITH a/k/a TIMMY, DONALD GASCHLER and SHELLY GASCHLER**, did knowingly and willfully combine, conspire, confederate and agree and have a tacit understanding with each other and with persons known and unknown to the Grand Jury, to commit an offense against the United States, to wit: to violate Title 21, United States Code, Section 841(a)(1). It was a purpose and object of the conspiracy knowingly, and intentionally to possess with intent to distribute and to distribute 1 kilogram and more of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Sections 846 and 841(b)(1)(A).

COUNT TWO

(ITAR)

On or about September 26, 2008, defendant **LONNIE ANTHONY SMITH a/k/a TIMMY** did aid and abet and did cause travel by a person known to the grand jury in interstate commerce from in or about Weirton, West Virginia, within the Northern Judicial District of West Virginia, to in or about Robinson Township, Pennsylvania, with the intent to promote, manage, establish and carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and thereafter, defendant **LONNIE ANTHONY SMITH a/k/a TIMMY**, distributed and caused the distribution of heroin to a person known to the grand jury; in violation of Title 18, United States Code, Section 1952(a)(3) .

COUNT THREE

(Use of a Telephone to Facilitate the Distribution of Heroin)

On or about September 26, 2008, in or about Weirton, West Virginia, within the Northern Judicial District of West Virginia, and elsewhere, defendant **LONNIE ANTHONY SMITH a/k/a TIMMY** did unlawfully, knowingly, and intentionally cause to be used a communication facility, that is a telephone system in committing, causing and facilitating the commission of a felony under Title 21, United States Code, Section 841(a)(1), that is the distribution of heroin a Schedule I controlled substance; in violation of Title 21, United States Code, Sections 843(b) and 843(d)(1).

COUNT FOUR

(Felon in Possession of Firearms)

On or about December 4, 2008, in or near Follansbee, West Virginia, within the Northern Judicial District of West Virginia, and elsewhere, defendant **DONALD GASCHLER**, having been convicted of a crime punishable by imprisonment for a term exceeding one (1) year, to wit: on or about December 21, 2001, in the Circuit court of Brooke County, West Virginia case No. 01-F-24, defendant was convicted of delivery of marijuana, did knowingly possess in and affecting interstate commerce, firearms and ammunition, to wit: Norinco rifle, model BWK92 Sporter, .223 caliber, serial number 310555; ArmaLite Inc. rifle, model AR-10, .308 caliber, serial number US311925; Ruger rifle, model mini-14 (Ranch Rifle), .223 caliber, serial number 195-63207; Smith and Wesson shotgun, model Eastfield 916, 12 gauge, serial number B12342; Mossberg (Western Auto Supply) shotgun, model 330A, 410 gauge, no serial number; Savage Arms rifle, model Sporter, .22LR caliber, serial number 100087; Mossberg shotgun, model 395 KB, 12 gauge, serial number 1141921; Savage Arms rifle/shotgun combination, model 24, 410 gauge/22 caliber, no serial number; New England Firearms shotgun, model Pardner SB1, 20 gauge, serial number NK264619; Savage Arms rifle, model unknown, .22 caliber, no serial number; Marlin Firearms Company rifle, model 60, .22 LR caliber, serial number 04186576; Yugoslavian rifle (Imported by Century Arms Inc.), model AK, 7.62 x 39 caliber, serial number 1-298142; Marlin Firearms rifle, model Glenfield 70, .22LR caliber, serial number G8076; Ruger rifle (receiver and barrel only), model 10-22 carbine, .22 LR caliber, serial number 238-18102; Herman Weihrauch Company revolver (Imported by F.I.E.), model Armenius, .22 magnum caliber, serial number 795417; CZ pistol, model VZOR 70, 7.65 (32 auto) caliber, serial number 707893; Colt revolver, model Detective Special, .38 special caliber, serial number 45705R; Taurus revolver, model Raging Bull, .44 magnum, serial number YF312512;

Phoenix Arms pistol, model HP22A, .22LR caliber, serial number 4279804; Colt pistol, model unknown, .32 caliber, serial number 281094; A. Uberti revolver, model unknown, .22 caliber, serial number 133703; and Harrington and Richardson rifle, model Handi Rifle, .308 caliber, serial number HX231024; in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

COUNT FIVE

(Aiding and Abetting the Possession of Firearms in Relation to a Drug Trafficking Crime)

On or about December 4, 2008, in or near Follansbee, West Virginia, within the Northern Judicial District of West Virginia, defendants **DONALD GASCHLER** and **SHELLY GASCHLER** did knowingly use, carry and possess firearms, to wit: Norinco rifle, model BWK92 Sporter, .223 caliber, serial number 310555; ArmaLite Inc. rifle, model AR-10, .308 caliber, serial number US311925; Ruger rifle, model mini-14 (Ranch Rifle), .223 caliber, serial number 195-63207; Smith and Wesson shotgun, model Eastfield 916, 12 gauge, serial number B12342; Mossberg (Western Auto Supply) shotgun, model 330A, 410 gauge, no serial number; Savage Arms rifle, model Sporter, .22LR caliber, serial number 100087; Mossberg shotgun, model 395 KB, 12 gauge, serial number 1141921; Savage Arms rifle/shotgun combination, model 24, 410 gauge/22 caliber, no serial number; New England Firearms shotgun, model Pardner SB1, 20 gauge, serial number NK264619; Savage Arms rifle, model unknown, .22 caliber, no serial number; Marlin Firearms Company rifle, model 60, .22 LR caliber, serial number 04186576; Yugoslavian rifle (Imported by Century Arms Inc.), model AK, 7.62 x 39 caliber, serial number 1-298142; Marlin Firearms rifle, model Glenfield 70, .22LR caliber, serial number G8076; Ruger rifle (receiver and barrel only), model 10-22 carbine, .22 LR caliber, serial number 238-18102; Herman Weihrauch Company revolver (Imported by F.I.E.), model Armenius, .22 magnum caliber, serial number 795417; CZ pistol, model VZOR 70, 7.65 (32 auto) caliber, serial number 707893; Colt revolver, model Detective Special, .38 special caliber, serial number 45705R; Taurus revolver, model Raging Bull, .44 magnum, serial number YF312512; Phoenix Arms pistol, model HP22A, .22LR caliber, serial number 4279804; Colt pistol, model unknown, .32 caliber, serial number 281094; A. Uberti revolver, model unknown, .22 caliber, serial number 133703; and Harrington and Richardson rifle, model Handi Rifle, .308 caliber, serial

number HX231024, during and in relation to a drug trafficking crime for which they may be prosecuted in a Court of the United States, and in furtherance of such crime, did knowingly possess such firearms, all in relation to their possession with intent to distribute heroin in Count One of this Superseding Indictment, in violation of Title 18, United States Code, Sections 924(c)(1)(A)(I) and Title 18, United States Code, Section 2.

COUNT SIX

(Unlawful Drug User in Possession of Firearms)

On or about December 4, 2008, in or about Follansbee, West Virginia, within the Northern Judicial District of West Virginia, defendant, **DONALD GASCHLER**, who is an unlawful user and a person addicted to a controlled substance, did knowingly possess, in an affecting interstate commerce, a firearm, to wit: Norinco rifle, model BWK92 Sporter, .223 caliber, serial number 310555; ArmaLite Inc. rifle, model AR-10, .308 caliber, serial number US311925; Ruger rifle, model mini-14 (Ranch Rifle), .223 caliber, serial number 195-63207; Smith and Wesson shotgun, model Eastfield 916, 12 gauge, serial number B12342; Mossberg (Western Auto Supply) shotgun, model 330A, 410 gauge, no serial number; Savage Arms rifle, model Sporter, .22LR caliber, serial number 100087; Mossberg shotgun, model 395 KB, 12 gauge, serial number 1141921; Savage Arms rifle/shotgun combination, model 24, 410 gauge/22 caliber, no serial number; New England Firearms shotgun, model Pardner SB1, 20 gauge, serial number NK264619; Savage Arms rifle, model unknown, .22 caliber, no serial number; Marlin Firearms Company rifle, model 60, .22 LR caliber, serial number 04186576; Yugoslavian rifle (Imported by Century Arms Inc.), model AK, 7.62 x 39 caliber, serial number 1-298142; Marlin Firearms rifle, model Glenfield 70, .22LR caliber, serial number G8076; Ruger rifle (receiver and barrel only), model 10-22 carbine, .22 LR caliber, serial number 238-18102; Herman Weihrauch Company revolver (Imported by F.I.E.), model Armenius, .22 magnum caliber, serial number 795417; CZ pistol, model VZOR 70, 7.65 (32 auto) caliber, serial number 707893; Colt revolver, model Detective Special, .38 special caliber, serial number 45705R; Taurus revolver, model Raging Bull, .44 magnum, serial number YF312512; Phoenix Arms pistol, model HP22A, .22LR caliber, serial number 4279804; Colt pistol, model unknown, .32 caliber, serial number 281094; A. Uberti revolver, model unknown, .22 caliber, serial number 133703; and

Harrington and Richardson rifle, model Handi Rifle, .308 caliber, serial number HX231024; in violation of Title 18, United States Code, Sections 922(g)(3) and 924(a)(2).

COUNT SEVEN

(Unlawful Drug User in Possession of Firearms)

On or about December 4, 2008, in or about Follansbee, West Virginia, within the Northern Judicial District of West Virginia, defendant, **SHELLEY GASCHLER**, who is an unlawful user and a person addicted to heroin a Schedule I controlled substance, did knowingly possess, in an affecting interstate commerce, a firearm, to wit: Norinco rifle, model BWK92 Sporter, .223 caliber, serial number 310555; ArmaLite Inc. rifle, model AR-10, .308 caliber, serial number US311925; Ruger rifle, model mini-14 (Ranch Rifle), .223 caliber, serial number 195-63207; Smith and Wesson shotgun, model Eastfield 916, 12 gauge, serial number B12342; Mossberg (Western Auto Supply) shotgun, model 330A, 410 gauge, no serial number; Savage Arms rifle, model Sporter, .22LR caliber, serial number 100087; Mossberg shotgun, model 395 KB, 12 gauge, serial number 1141921; Savage Arms rifle/shotgun combination, model 24, 410 gauge/22 caliber, no serial number; New England Firearms shotgun, model Pardner SB1, 20 gauge, serial number NK264619; Savage Arms rifle, model unknown, .22 caliber, no serial number; Marlin Firearms Company rifle, model 60, .22 LR caliber, serial number 04186576; Yugoslavian rifle (Imported by Century Arms Inc.), model AK, 7.62 x 39 caliber, serial number 1-298142; Marlin Firearms rifle, model Glenfield 70, .22LR caliber, serial number G8076; Ruger rifle (receiver and barrel only), model 10-22 carbine, .22 LR caliber, serial number 238-18102; Herman Weihrauch Company revolver (Imported by F.I.E.), model Armenius, .22 magnum caliber, serial number 795417; CZ pistol, model VZOR 70, 7.65 (32 auto) caliber, serial number 707893; Colt revolver, model Detective Special, .38 special caliber, serial number 45705R; Taurus revolver, model Raging Bull, .44 magnum, serial number YF312512; Phoenix Arms pistol, model HP22A, .22LR caliber, serial number 4279804; Colt pistol, model unknown, .32 caliber, serial number 281094; A. Uberti revolver, model unknown, .22 caliber, serial

number 133703; and Harrington and Richardson rifle, model Handi Rifle, .308 caliber, serial number HX231024; in violation of Title 18, United States Code, Sections 922(g)(3) and 924(a)(2).

FORFEITURE ALLEGATION

1. Pursuant to Title 21 United States Code section 853, upon obtaining a conviction with respect to the alleged Controlled Substances Act offense, it is the intention of the United States to seek at sentencing the forfeiture of any property that was used, or intended to be used, to commit or to facilitate the commission of such offense, and any property, real or personal, that constitutes or was derived from proceeds traceable to such offense, including **\$5,000.00** in United States currency seized from Room 202 of the Red Roof Inn, Old Steubenville Pike, Pittsburgh, PA, on June 13, 2008; **\$795.00** taken from Kenneth Salters, Jr. upon his arrest on June 13, 2008; approximately **\$1,500.00** taken from Lonnie Smith on or about February 9, 2009; **2004 Surveyor travel trailer VIN No. 4X4TSVV394L003525 Ohio Temporary Tag P285975**; and a money judgment in the amount of at least **\$500,000**.

2. Pursuant to Title 18 United States Code section 924(d), upon obtaining a conviction with respect to the alleged Gun Control Act offense, it is the intention of the United States to seek at sentencing the forfeiture of any firearm and any ammunition involved in the commission of such offense, including:

- (1) **Norinco rifle, model BWK92 Sporter, .223 caliber, serial number 310555;**
- (2) **ArmaLite Inc. rifle, model AR-10, .308 caliber, serial number US311925;**
- (3) **Ruger rifle, model mini-14 (Ranch Rifle), .223 caliber, serial number 195-63207;**
- (4) **Smith and Wesson shotgun, model Eastfield 916, 12 gauge, serial number B12342;**
- (5) **Mossberg (Western Auto Supply) shotgun, model 330A, 410 gauge, no serial number;**
- (6) **Savage Arms rifle, model Sporter, .22LR caliber, serial number 100087;**
- (7) **Mossberg shotgun, model 395 KB, 12 gauge, serial number 1141921;**

- (8) Savage Arms rifle/shotgun combination, model 24, 410 gauge/22 caliber, no serial number;
- (9) New England Firearms shotgun, model Pardner SB1, 20 gauge, serial number NK264619;
- (10) Savage Arms rifle, model unknown, .22 caliber, no serial number;
- (11) Marlin Firearms Company rifle, model 60, .22 LR caliber, serial number 04186576;
- (12) Yugoslavian rifle (Imported by Century Arms Inc.), model AK, 7.62 x 39 caliber, serial number 1-298142;
- (13) Marlin Firearms rifle, model Glenfield 70, .22LR caliber, serial number G8076;
- (14) Ruger rifle (receiver and barrel only), model 10-22 carbine, .22 LR caliber, serial number 238-18102;
- (15) Herman Weihrauch Company revolver (Imported by F.I.E.), model Armenius, .22 magnum caliber, serial number 795417;
- (16) CZ pistol, model VZOR 70, 7.65 (32 auto) caliber, serial number 707893;
- (17) Colt revolver, model Detective Special, .38 special caliber, serial number 45705R;
- (18) Syracuse Arms Company double barrel shotgun, model New Twist, 12 gauge, no serial number;
- (19) Ithaca Gun Company double barrel shotgun, model unknown, 16 gauge, serial number 352694;
- (20) Pistol, unknown manufacturer, caliber undetermined, no serial number;
- (21) Taurus revolver, model Raging Bull, .44 magnum, serial number YF312512;
- (22) Phoenix Arms pistol, model HP22A, .22LR caliber, serial number 4279804;
- (23) Colt pistol, model unknown, .32 caliber, serial number 281094;
- (24) A. Uberti revolver, model unknown, .22 caliber serial number 133703;
- (25) Harrington and Richardson rifle, model Handi Rifle, .308 caliber, serial number HX231024;

(26) Beretta, model 92 FS, 9 mm, serial number BER312987; and

(27) Sig Sauer 9mm pistol with obliterated serial number seized from the vehicle of Lonnie Smith on February 9, 2009.

3. If any forfeitable property, as a result of any act or omission of a convicted defendant (a) cannot be located upon the exercise of due diligence; (b) has been transferred or sold to, or deposited with, a third party; (c) has been placed beyond the jurisdiction of the court; (d) has been substantially diminished in value; or (e) has been commingled with other property which cannot be divided without difficulty, it is the intent of the United States to seek the forfeiture of any property owned by such defendant up to the value of the forfeitable property.

A true bill,

/s/_____
Grand Jury Foreperson
(Signature on File)

/s/_____
SHARON L. POTTER
United States Attorney